

STATE OF COLORADO

DEPARTMENT OF REVENUE
Enforcement Line of Business

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September 27, 2010

Ref: Statement of Position relative to the "35 Day Rule"

Note: This statement of position only applies to Medical Marijuana Centers that are presented with applications for patient registry cards that are **not denied within 35 days** of the applications being properly submitted to CDPHE.

The Medical Marijuana Enforcement Division (MED) has received numerous requests for clarification as to its position regarding a Medical Marijuana Center (MMC) selling medical marijuana to patients within the first 35 days from the date the patient sends its patient registry paperwork to the Colorado Department of Public Health and Environment (CDPHE).

The following states the MED'S position.

Legal Authority:

The pertinent portion of section (3)(d) of Amendment 20 provides that where the state health agency, within thirty-five days of receipt of an application, fails to issue a registry identification card or fails to issue a verbal or written notice of denial of such application, the patient's application for such card will be deemed to have been approved.

Section 25-1.5.106(7)(a), C.R.S., requires a patient to have his or her registry card in his or her possession at all times he or she possesses any form of medical marijuana. The section also provides that possession of a registry card is not required if more than thirty-five days have passed since the date the patient filed his or her medical marijuana program application and the state health agency has not yet issued or denied a registry identification card. In those circumstances a copy of the patient's application along with proof of the date of submission shall be in the patient's possession at all times that he or she is in possession of any form of medical marijuana until the state health agency issues or denies the registry identification card."

Section 12-43.3-901(4)(d)(I), C..R.S., makes it unlawful for a licensed MMC to sell medical marijuana to a person not able to produce a valid patient registry identification card.

Discussion:

Neither Amendment 20 nor section 25-1.5-106(7)(a), C.R.S., addresses the ability of a MMC to sell medical marijuana to patient registry identification card applicants during the immediate thirty-five day period following the date of submission of their patient registry paperwork to CDPHE. Section 12-43.3-901(4)(d)(I), C..R.S., however, makes it unlawful for a licensed MMC to sell medical

marijuana to a person not able to produce a valid patient registry identification card. Accordingly, without a valid patient registry card, a MMC cannot legally sell medical marijuana to patients.

The thirty-five day period was established to allow CDPHE time to evaluate patients' applications and approve or deny such applications. *See* Amendment 20, section (3). The failure of CDPHE to issue or deny a patient registry application after thirty-five days creates a presumption of approval until a formal approval or denial is issued. That same deemed approval does NOT apply in the immediate thirty-five days from the date of submission of the application for inclusion into the patient registry to CDPHE. Therefore, the MED is not in a position to authorize a MMC to sell medical marijuana to a patient whose application for a registry card is less than thirty-five days old.

MED Division Position:

A patient with application paperwork that is less than thirty-five days old may be denied a card by the CDPHE in the remaining portion of the thirty-five days. Therefore, it is the position of the MED that if a MMC sells medical marijuana to persons having evidence of the proper filing of applications with the Patient Registry which are not dated at least thirty-five days prior to the sale, that MMC is doing so at its peril.

If MMCs sell medical marijuana to patients having evidence of the required applications being filed with the medical marijuana registry, but not dated at least thirty-five days prior to the date of the sale which are later denied by CDPHE, or the patient has presented fraudulent documents, the MMC may face administrative and criminal sanctions as provided in law.

Approved:



Matt D. Cook

Sr. Director of Enforcement